Remarks:

Regarding the rejection of claims 1, 2 and 11-27 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,382,111 to Kuwayama et al. (hereinafter "Kuwayama") in view of U.S. Patent No. 4,233,161 to Sato et al. (hereinafter "Sato"):

Applicants respectfully traverse the rejection of the foregoing claims in view of Kuwayama further in view of Sato.

Prior to discussing the merits of the Patent Office's position, the undersigned reminds the Patent Office that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). See also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful.

Amgen, Inc. v. Chugai Pharmaceutical Co., 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); In re O'Farrell, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

Neither Kuwayama nor Sato, taken singly or in combination, teaches or suggests a textile treatment delivery system adapted to impart textile conditioning composition and fragrance to a fabric while it is being dried in a heated drier, the delivery system comprising at least one textile conditioning composition and at least one fragrance in a sublimable carrier substance as required by claim 1. Additionally, neither Kuwayama nor Sato, taken singly or in combination, teaches or suggests a method of providing textile conditioning and fragrance to a fabric that is being dried in a heated drier, comprising the addition to the fabric in the drier of at least one textile conditioning composition and at least one fragrance in a sublimable carrier substance as required by claim 25

Kuwayama discloses a process of treating fibers such as yarn so as to impart lubricity to fibers by the application of a sublimable substance. As set forth in the October 1, 2007 Amendment, Kuwayama is only relevant insofar as the lubrication of fibers which are later to be used in spinning toward mating operations as the lubricity imparted upon the fibers appears not to have a detrimental effect when post-treated. The industrial method of treating fibers disclosed in Kuwayama can be distinguished from domestic processes for treating of a fabric with a textile conditioning composition and fragrance while the fabric is being dried in a heated drier, e.g., clothes dryer as may be found in a consumer's domestic residence. A skilled artisan would not be led to produce the presently claimed system and method of treating fabric from the teaching of Kuwayama which are directed lubricating industrial fiber/yarn.

Kuwayama clearly fails to teach or to even remotely suggest a system and a method to impart textile conditioning composition and fragrance to a fabric as required by claims 1 and 25, respectively. Sato does not remedy this deficiency of Kuwayama because Sato merely discloses that adamantane and cyclododecane sublimable compositions are useful as a carrier for perfume, as acknowledged by the Patent Office (at page 5 of the outstanding *Office Action*), and fails to teach or suggest that the adamantane mixed with perfume is used to treat a fabric.

At page 3 of the outstanding Office Action, the Patent Office alleges that (1) Kuwayama teaches the claimed adamantane sublimable substance applied to fiber/yarn, (2) one of ordinary skill would have been motivated to combine the teachings of Kuwayama with Sato since both references teach the analogous art of adamantane sublimable compositions and Sato teaches that adamantane sublimable compositions are carriers for perfume, and (3) Applicants' arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from references. Applicants respectfully disagree with the Patent Office's allegations.

First, Kuwayama does not teach the claimed adamantane sublimable substance applied to fiber/yarn. Rather, Kuwayama discloses an industrial process of treating fibers such as yarn so as to impart lubricity to fibers by the application of a sublimable substance. Kuwayama is only relevant insofar as the lubrication of fibers which are later to be used in spinning toward mating operations as the lubricity imparted upon the fibers appear not to have a detrimental effect when post-treated. The industrial treating of fibers disclosed in Kuwayama is not the same as or similar to the domestic treating of a fabric or garments, e.g. clothes, with a textile conditioning composition and fragrance while the fabric is being dried in a heated drier. A skilled artisan would *not* be led to produce the system and method recited in claims 1 and 25 from the teaching of Kuwayama which are directed to an industrial lubricating of fiber/yarn.

Kuwayama clearly fails to teach or suggest a system and method to impart textile conditioning composition and fragrance to a fabric as required by claims 1 and 25, respectively. Moreover, Sato does not remedy this deficiency of Kuwayama because Sato merely discloses adamantane mixed with perfume, as acknowledged by the Patent Office. Nowhere does Sato disclose a system or method for treating a fabric or that the adamantane mixed with perfume is used to treat a fabric. A skilled artisan would not be led to produce the applicant's presently claimed invention from the teachings of Kuwayama which is directed to industrial lubricating of fibers/yarns and Sato which is directed to adamantane mixed with perfume.

Second, Kuwayama and Sato are not directed to an analogous art of adamantane sublimable compositions as alleged by the Patent Office. Kuwayama is directed to an adamantane composition being used as a lubricating means and Sato is directed to an adamantane composition being used a means to disseminate fragrances into the atmosphere. Thus, one of ordinary skill would not have been motivated to combine the teachings of Kuwayama (directed to a lubricating means) with the teachings of Sato (directed to a disseminating means) to achieve the system and method to impart textile conditioning composition and fragrance to a fabric while it is being dried in a heated drier.

Third, contrary to the allegations by the Patent Office, Applicants' arguments comply with 37 CFR 1.111(b) because Applicants' arguments are more than general allegations. Kuwayama fails to teach or suggest in any reasonable manner the use of a sublimable material as a carrier for further constituents, or as being useful with further constituents. Applicants submit that at the end of Kuwayama's process, the sublimable material applied would likely have completely dissipated and thus provide no useful treatment benefits to finished goods, or textiles. Indeed it is clear that Kuwayama's process relates to discrete fibers or yarns, and is not related to finished goods such as fabrics or garments. At col. 6, lines 22-31, Kuwayama teaches:

> A small amount of the sublimable substance remains deposited on the knitted and woven fabrics, which should be removed because it is not needed after the knitting or weaving. The removal of the residual sublimable substance can be performed merely by allowing the knitted, woven or like fabrics to stand because the deposited material is sublimable. Thus, the present invention has an important feature that the step of removing the lubricant, which is essential for the conventional methods, can be omitted.

Moreover, at col. 7, lines 24-32, Kuwayama teaches:

> Although a small amount of the sublimable substance remains deposited on the fiber product, when being allowed to stand, it dissipates over a period of time. Thus, the step of removing the residual lubricant, which is essential for the conventional methods, can be omitted. Furthermore, when the fibers are sent to the subsequent operations while still containing the sublimable substance and are processed therein, the sublimable substance is evaporated and removed.

Kuwayama clearly discloses that for conventional methods of lubricating yarn that is woven or knitted into a textile, removal of the residual lubricant is essential. At best, Kuwayama teaches a lubricant for application to fibers of yarns well prior to the manufacture of any finished goods produced therefrom, and does not teach or suggest any treatment benefits which are relevant to a clothes dryer or to the treatment of finished goods because the residual sublimable substance of Kuwayama is necessarily removed. Kuwayama thus teaches away from the system and method of claims 1 and 25, respectively, because Kuwayama discloses that the residual sublimable lubricant is to be removed and not allowed to remain on the fiber/yarn product made from the lubricated yarn. Therefore, a skilled artisan, seeking to provide a solution whereby garments, other finished goods or fabrics which are tumbled in a conventional clothes dryer, would not consider Kuwayama's processes to be relevant in any way or manner.

At page 4 of the Office Action, the Patent Office alleges that the delivery of adamantane to textile in a heated drier as recited in claims 1 and 25 is taught by Kuwayama because Kuwayama discloses the alleged same adamantane sublimable substance's placement in an appropriate pot or evaporation chamber with subjection to heat which encompasses the broad scope of the claimed dryer. Applicants respectfully disagree with this allegation by the Patent Office.

At col. 7, lines 1-9, Kuwayama discloses:

> The sublimable substance is deposited on the fibers either by a method in which the sublimable substance is placed in an appropriate pot or evaporation chamber and evaporated by heating or placing it under reduced pressure, or by a method in which the sublimable substance is converted into any desired form, such as an emulsion, a suspension, a solution and an aerosol, by the usual procedure and then brought in contact with the fibers by techniques, such as coating and soaking.

Kuwayama discloses depositing the sublimable substance on the fibers by evaporating the sublimable substance in a pot or evaporation chamber by heating or placing the sublimable substance under reduced pressure for evaporation. Claims 1 and 25 require the fabric to be dried in a heated drier and not to be heated in a pot or evaporation chamber as disclosed in Kuwayama. The pot or evaporation chamber of Kuwayama is utilized in industrial systems and processes for lubricating fibers and the claimed heated drier is utilized in domestic systems and processes for drying and treating textiles or fabrics. Thus, the pot or evaporation chamber of Kuwayama is not the same as or similar to heated drier required in claims 1 and 25 because the pot or evaporation chamber of Kuwayama is used in an entirely different process and for an entirely different purpose. Therefore, a skilled artisan, seeking to provide a solution whereby textile conditioning composition and fragrance are imparted to fabrics while the fabrics are being dried in a conventional clothes dryer, would not consider Kuwayama's pot or evaporation chamber to be relevant in any way or manner.

Applicants also traverse the reliance upon Sato in seeking to address and over, the fatal shortcomings out of Kuwayama. The Patent Office points to a passing statement at col. 2, lines 15 - 21 which makes reference that sublimable hydrocarbons can be used in compositions of Sato, which sublimable hydrocarbons may include adamantine. Sato however does not teach or even suggest the utility of his compositions on textiles. It is only the Patent Office's statement that "... it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the teachings composition of Kuwayama et al., with a fragrance in a sublimable carrier, as recited by the instant claims, because Sato et al. teach that adamantine and cyclododecane the sublimable compositions are useful as a carrier for perfume and Kuwayama et al. teach the analogous

adamantine and cyclododecane sublimable substances for application to textile. One of ordinary skill in the art would be motivated to combine the teachings of Kuwayama et al. with that of Sato et al. since both references teach the analogous sublimable substances." Applicants strongly traverse the Patent Office's presupposition of this point.

It is Applicants' viewpoint that the relevant skilled artisan would be one faced with the technical problem of seeking to provide an improved textile treatment benefit to finished goods and textiles which treatment process can be practiced in a clothes dryer. Neither Kuwayama nor Sato, taken singly or in combination, appear to be relevant, as neither of these references teach or suggest the utility of their processes or their compositions in such a manner or in such an environment of use. First, Sato is wholly silent on this point. Second, the Patent Office at best alleges that Kuwayama would suggest various generic modes of applying a sublimable material directly to fibers or yarns which however are not however practiced in a clothes dryer. It is Applicants' viewpoint that only by "hindsight reconstruction" has the Patent Office selected among the various statements within Kuwayama and Sato in order to reconstruct the system and method as required in claims 1 and 25, respectively. However, as is well-recognized in the jurisprudence such a hindsight reconstruction is impermissible. See *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987)

In view of the foregoing remarks the present Applicants disagree with the Patent Office's position and traverse the Patent Office's rejections, and assert that the Patent Office has not met the proper burden of proof to present and maintain the rejection; such are simply unsupported by the facts for the reasons noted above. Rather Applicants contend that the Examiner's grounds of rejection is at, at best, a hindsight reconstruction, using Applicants' claims as a template to reconstruct the invention by picking and choosing amongst isolated disclosures from the prior art. This is impermissible under the law. Accordingly, reconsideration of the propriety of the rejection of claims 1, 2 and 11-27 and its withdrawal is respectfully requested.

In view of the foregoing remarks, reconsideration of the rejections raised by the Patent Office is respectfully requested, and early issuance of a *Notice of Allowance* is solicited. Should the Patent Office in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Patent Office is invited to contact the undersigned at their earliest convenience.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

Applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully submitted,

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CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and all attachments thereto is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

Allyson Ross — Allyson Ross

4/18/08 — Date: